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STATE OF TAMIL NADU

v.

HIND STONE ETC.

February 5, 1981

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[R. S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

Mines and Minerals (Regulation and Development) Act, 1957—*Section* 15—*Rule* 8-C *of Tamil Nadu Minor Mineral Concession Rules,* 1959—*Scope of—Rule, if* ultra vires *the rule making power of the State Government—Whether violative of Articles* 301 *and* 303 *of the Constitution.*

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Interpretation—"Regulation" whether includes "prohibition".

The Mines and Minerals (Regulation & Development) Act, 1957 (Central Act) was enacted in the public interest to enable the Union to take under its control the regulation of mines and the development of minerals. Exercising its power under this Act, the Central Government declared by a notification that black granite was a minor mineral.

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Exercising power vested in it by section 15 of the Act, the State Government made the Tamil Nadu Minor Mineral Concession Rules, 1959. Rule 8 of the Rules prescribes the procedure for lease of quarries to private persons. By rule 8-C, introduced in 1977, leases for quarrying black granite in favour of private persons were banned. Sub-rule (2) of this rule enacts that the State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the

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State Government.

Several applications for the grant of fresh leases as well as for the renewal of leases for quarrying black granite belonging to the State Government were submitted to the State Government, some prior to the introduction of rule 8C and some after the rule came into force. The State Government considered all the applications and rejected all of them in view of rule 8C.

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The respondents filed writ petition questioning the vires of Rule 8-C on various grounds. The High Court struck down Rule 8-C on the ground that it exceeded the rule making power given to the State Government and held that it was not open to the appellant Government to keep the applications pending for a long time and then to dispose them of on the basis of a rule which had come into force later. As a result all the applications were disposed

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of without reference to rule 8-C.

The appellant contended that : (I) The approach of the High Court was vitiated by its failure to notice the crucial circumstance that the minerals belonged to the Government, (II) The respondents had no vested or indefeasible right to obtain a lease or a renewal to quarry the minerals, (III) There were good reasons for banning the grant of lease to quarry black granite to private parties and (IV) The Government could not be compelled to grant leases which

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would result in the destruction of the mineral resources of the country.

On behalf of the respondent it was submitted that (I) the question of ownership of the minerals was irrelevant, (II) It was not open to the appellant

to exercise its subordinate legislative function in a manner to benefit itself as owner of the minerals, nor was it open to the appellant to create monopoly by such means, (III) There was violation of articles 301 and 303 of the Constitution, (IV) Rule 8-C had no application to renewals and (V) That in any event it would not have the effect of affecting applications made more than 60 days before it came into force. A

Accepting the appeals, it was B

HELD : Rule 8-C was made in bonafide exercise of the rule making power of the Appellant Government and not in its misuse to advance its own self interest. Making a rule which is perfectly in order is not to be considered a misuse of the rule making power, if it advances the interest of State, which really means the people of the State. Rivers, forests, minerals and as such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation C owes a duty to all succeeding generations to develop & conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the Nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. [751C-D, 753G-H]

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2. The Public interest which induced Parliament to make the declaration contained in S.2 of the Mines & Minerals (Regulation and Development) Act, 1957 has naturally to be the paramount consideration in all matters concerning the regulation of Mines & Minerals. Parliament's Policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear sign posts to lead and guide the E subordinate legislating authority in the matter of the making of rules. [751G-H]

3. The other provisions of the Act, particularly sections 4A, 17 and 18, indicate that the rule making authority under S.15 has not exceeded its powers in banning leases for carrying black granite in favour of private parties and in stipulating that the State Government themselves may engage in quarrying F black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government. To view such a rule made by the Subordinate legislating body as a rule made to benefit itself merely because the State Government happens to be the subordinate legislating body is, but, to take too narrow a view of the functions of that body. [751H, 752A-B]

H. C. Narayanappa & Ors. v. *State of Mysore & Ors.* [1960] 3 SCR 742 G @ 745, 752-753 referred to.

5. Whenever there is a switch over from 'private sector' to 'public sector' it does not necessarily follow that a change of policy requiring express legislative sanction is involved. It depends on the subject and the statute. But if a decision is taken to ban private mining of a single minor mineral for the purpose of conserving it, such a ban, if it is otherwise within the bounds H of the authority given to the Government by the Statute, cannot be said to involve any change of policy. The policy of the Act remains the same and it is, the conservation and the prudent and discriminating exploitation of

A minerals, with a view to secure maximum benefit to the community. Exploitation of minerals by the private and/or the public sector is contemplated. If in the pursuit of the avowed policy of the Act, it is thought exploitation by the public sector is best and wisest in the case of a particular mineral and, in consequence, the authority competent to make the subordinate legislation makes a rule banning private exploitation of such mineral, which was hitherto B permitted. There is no change of policy merely because that was previously permitted is no longer permitted. [756A-D]

Municipal Corporation of the City of Toronto v. *Virgo* [1896] A.C. 88, *Attorney General for Ontario* v. *Attorney General for the Dominion and the Distillers and Brewers Association,* [1896] A.C. 348, *State of Uttar Pradesh and Others* v. *Hindustan Aluminium Corporation Ltd. and Ors.,* [1979] 3 SCR 709, *G. K. Krishnan etc.* v. *The State of Tamil Nadu* C *and Anr. etc.* [1975] 2 SCR 715 @ 721, *Commonwealth of Australia* v. *Bank of New South Wales* [1950] A.C. 235 referred to.

6. The restrictions, freedom from which is guaranteed by Art. 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. The Act and the rules properly made thereunder are, therefore, outside the purview of Art. 301. Even otherwise Art. 302 which enables Parliament, by law, to impose such restrictions on the freedom D of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest also furnishes an answer to the claim based on the alleged contravention of Art. 301. [757F-H, 758A-B]

7. The Mines and Minerals (Regulation and Development) Act is a law enacted by Parliament and declared by Parliament to be expedient in the E public interest. Rule 8-C has been made by the appellant Govt. by notification in the official Gazette, pursuant to the power conferred upon it by sec. 15 of the Act. A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. "Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the act and are to be judicially noticed for all purposes of F construction or obligation. [758B-G]

Atiabari Tea Co. Ltd. v. *State of Assam & Ors.* [1961] 1 SCR 809 *The Automobile Transport Rajasthan Ltd.,* v. *State of Rajasthan & Ors.* [1963] 1 SCR 491 and *State of U.P. & Ors.* v. *Babu Ram Upadhya* [1961] 2 SCR 679, referred to.

8. Rule 9 makes it clear that a renewal is not to be obtained automatically, G for the mere asking. The applicant for the renewal has, particularly, to satisfy the Government that the renewal is in the interests of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is applicable at the time of the grant of lease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable in the first instance may lead to absurd results. Therefore rule 8-C is attracted in H considering applications for renewal of leases also. [759A-D]

9. While the applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed

of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in any one, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. [759G-H, 760A]

10. The language of Rule 8-C is clear that it can not have any application to lands in which the right to minerals belongs to the applicants themselves. In the case of lands in which the right to minerals belongs to private owners and those owners seek permission to quarry black granite the applications will have to be dealt with under the relevant rules in Sec. III of the Tamil Nadu Minor Mineral concession Rules. Rule 8-C does not impose a general ban on quarrying black granite but only imposes a bar on the grant of leases for quarrying black granite. [760D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2602-2604 of 1980.

Appeals by special leave from the Judgment and Order dated 20-6-1980 of the Madras High Court in Writ Petition Nos. 4467 of 1977, 2933 and 4793 of 1978.

Lal Narain Sinha Att. Genl. of India for the Appellant in CA 2602/80.

Soli J. Sorabjee for the Appellant in CA 2603/80.

R. Krishnamurthy Adv. Genl. for the appellant in CA 2604/80.

A. V. Rangam and *K. Venkatawani* for the Appellant in all the matters.

Y. S. Chitale (Dr.), *Mrs. S. Ramachandran* and *Mukul Mudgal* for Respondent Nos. 11 and 42.

P. Chidambaram and *A. S. Nambiyar* for the Respondents.

F. S. Nariman, A. V. Rangam and *R. N. Sachthey* for the interveners.

V. Srinivasan, A. Venkatarayana and *P. N. Ramalingam* for Respondent No. 45.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J.—Entry 23 of List II of the Seventh Schedule to the Constitution is, "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union". Entry 54

A of List I of the Seventh Schedule is "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". Thus while 'regulation of mines and mineral development' is ordinarily a subject for State legislation. Parliament may, by law, declare the extent to which control of such B regulation and development by the Union is expedient in the public interest, and, to that extent, it becomes a subject for Parliamentary legislation. Parliament has accordingly enacted the Mines and Minerals (Regulation and Development) Act, 1957. By S. 2 of the Act it is declared that it is expedient in the public interest that the C Union should take under its control the regulation of mines and the development of minerals to the extent thereafter provided. It is now common ground between the parties that as a result of the declaration made by Parliament, by S. 2 of the Act, the State legislatures are denuded of the whole of their legislative power with respect to regulation of mines and mineral development and that the entire legislative D field has been taken over by Parliament. That this is the true position in law is clear from the pronouncements of this Court in *The Hingir-Rampur Coal Co. Ltd. & Ors.* v. *The State of Orissa & Ors.*(1) *State of Orissa v. M.A., Tulloch & Co.*(2) and *Baijnath Kedia* v. *State of Bihar & Ors.*(3) S. 3 of the Mines and Minerals (Regulation and Development) Act, 1957, defines various expressions occurring in the E Act. S. 3(a) defines 'minor minerals' and it includes any mineral declared to be a minor mineral by the Central Government by a notification in the Official Gazette. 'Black granite' has been so notified by the Central Government as a minor mineral. Section 4 to 9A are grouped under the heading 'General Restrictions on undertaking prospecting and mining operations'. These provisions as well as Sections 10 to F 13 are made inapplicable to 'minor minerals' by S. 14. S. 4 prohibits all prospecting or mining operations except under a licence or a lease granted under the Act and the rules made thereunder. S.4A(1) enables the State Government on a request made by the Central Government in the interest of regulation of mines and mineral development to terminate a mining lease pre-maturely and grant a fresh G mining lease in favour of a Government Company or Corporation owned or controlled by Government. Perhaps because s.4A(1) is inapplicable to minor minerals because of the provisions of S.14, S.4A(2) has been expressly enacted making somewhat similar provision, as in S.4A(1), in respect of 'minor minerals' also. S.4A(2)

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(1) [1961] 2 SCR 537
(2) [1964] 4 SCR 461.
(3) [1970] 2 SCR 100.

enables the State Government, after consultation with the Central Government, if it is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, to prematurely terminate a mining lease in respect of any minor mineral and grant a fresh lease in respect of such mineral in favour of a Government Company or Corporation owned or controlled by Government. S.5 imposes certain restrictions on the grant of prospecting licences and mining leases. S.6 prescribes the maximum area for which a prospecting licence or mining lease may be granted. S.7 prescribes the period for which prospecting licences may be granted or renewed. S.8 prescribes the period for which mining leases may be granted or renewed. S.9 provides for the payment of royalty and S.9A for the payment of dead rent. Sections 10, 11 and 12 constitute a group of sections under the title 'Procedure for obtaining prospecting licences or mining leases in respect of land in which the minerals vest in the Government'. S.10 provides for making applications for prospecting licences or mining leases in respect of any land in which the minerals vest in the Government. S.11 provides for certain preferential rights in favour of certain persons in the matter of grant of mining leases. S. 12 prescribes the Register of prospecting licences and mining leases to be maintained by the State Government. S.13 empowers the Central Government to make rules for regulating the grant of prospecting licences and mining leases. In particular we may mention that S.13(2)(a) empowers the Central Government to make rules providing for 'the persons by whom, and the manner in which, applications for prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor". S.13(2)(f), we may add, empowers the Central Government to make rules providing for 'the procedure for obtaining a prospecting licence or a mining lease in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such licence or lease may be granted or renewed'. S.14 makes the provisions of Sections 4 to 13 inapplicable to minor minerals. S.15 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and purposes connected therewith. S.15(3) provides for the payment of royalty in respect of minor minerals at the rate prescribed by the rules framed by the State Government. S.16 provides for the modification of mining leases granted before October 25, 1949. S.17 enables the Central Government, after consultation with the State Government to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease, in which event the Central

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A Government shall publish a notification in the official Gazette giving the prescribed particulars. The Central Government may also declare that no prospecting licence or mining lease shall be granted in respect of any land specified in the notification. S.18 casts a special duty on the Central Government to take all necessary steps for the conservation and development of minerals in India. Sections 19 to 33 are B various miscellaneous provisions with which we are not now concerned.

Pursuant to the power vested in it under S.15 of the Mines and Minerals (Regulation and Development) Act, 1957, the Government of Tamil Nadu has made the Tamil Nadu Minor Mineral Concession Rules, 1959. Section II of the rules consisting of rules 3 to 16 is G entitled "Government lands in which the minerals belong to the Government". Rule 8 prescribes the procedure for the lease of quarries to private persons. The ordinary procedure is to publish a notice in the District Gazette inviting applications, thereafter to hold an auction and finally to grant a lease to the highest bidder. Rule 8A D which was introduced by way of an amendment in 1972, provides for a special procedure for the sanctioning of leases in favour of applicants who require the minerals for their existing industries or who have an industrial programme for the utilisation of the mineral in their own industry. Rule 8B was introduced in 1975 making special provision for the grant of leases for quarrying black granite. The E rule is as follows :

> "8-B. *Lease of quarries in respect of black granite to private persons* (1) Notwithstanding anything to the contrary contained in rules 8 and 8A, the authority competent to grant leases in respect of quarrying black granite shall be the State F Government.
>
> (2) An application for the grant of a quarrying lease in respect of any land shall be made to the Collector of the District concerned in the prescribed form in triplicate and shall be accompanied by a fee of Rs. 100/-. The Collector shall G after scrutiny, forward the application along with his remarks to the Director of Industries & Commerce who shall technically scrutinise the industrial programme given by the applicant and forward the application with his remarks to the Government."

H "(G. O. Ms. No. 993 Industries dt. 25-8-1975". Rule 8-C was introduced by G. O. Ms. No. 1312 Industries dated December 2, 1977. By this rule leases for qaurrying black granite

in favour of private persons are banned. Leases can only be granted in favour of a Corporation wholly owned by the State Government. It is the vires of this rule which was under challenge before the High Court and is also under challenge now. It will be useful to extract the same. It is as follows :

> "8-C *Lease of quarries in respect of black granite to Government Corporation, etc.*
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> (1) Notwithstanding anything to the contrary contained in these rules, on and from 7th December, 1977 no lease for quarrying black granite shall be granted to private persons.
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> (2) The State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government.
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> Provided that in respect of any land belonging to any private person, the consent of such person shall be obtained for such quarrying or lease".

Rule 9 provides for renewal of leases and it is in the following terms :

> "9. Renewal of lease.—(1) The Collector may on application renew for a further period not exceeding the period for which the lease was originally granted in each case if he is satisfied that—
>
> (i) such renewal is in the interests of mineral development, and
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> (ii) the lease amount is reasonable in the circumstances of the case.
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> (2) Every application for renewal shall be made to Collector, sixty days prior to the date of expiry of the lease :
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> Provided that a lease, the period of which exceeds ten years shall not be renewed except with the sanction of the Director of Industries and Commerce".

A proviso was added to rule 9(2) in 1975 and it said :

> "provided also that the renewal for quarrying black granite shall be made by the Government".

Several persons who held leases for quarrying black granite belonging to the State Government and whose leases were about to expire, applied to the Government of Tamil Nadu for renewal of their leases. In some of the cases applications were made long prior

A to the date of G. O. Ms. No. 1312 by which Rule 8 C was introduced. Some applications were made after Rule 8 C came into force. There were also some applications for the grant of fresh leases for quarrying black granite. All the applications were dealt with after Rule 8 C came into force and all of them were rejected in view of Rule 8C. Several Writ Petitions were filed in the High Court questioning the B vires of Rule 8C on various grounds. Apart from canvassing the vires of Rule 8C, it was contended that Rule 8C did not apply to grant of renewals of lease at all. It was also argued that in any event, in those cases in which the applications for renewal had been made prior to the coming into force of Rule 8C, their applications C should have been dealt with without reference to Rule 8C. The Madras High Court while not accepting some of the contentions raised on behalf of the aplicants, struck down Rule 8C on the ground that it exceeded the rule making power given to the State Government under S.15 which, it was said, was only to regulate and not to prohibit the grant of mining leases. As a consequence all the applica- D tions were directed to be disposed of without reference to Rule 8C. It was also observed that even if Rule 8C was valid it applied only to the grant of fresh leases and not to renewals. It was also held that it was not open to the Government to keep the applications pending for a long time and then to dispose them of on the basis of a rule which had come into force later. The State Government has E come in appeal against the judgment of the Madras High Court while the respondent-applicants have tried to sustain the judgment of the Madras High Court on grounds which were decided against them by the Madras High Court.

The learned Attorney General who appeared for the Government F of Tamil Nadu submitted that the approach of the High Court was vitiated by its failure to notice the crucial circumstance that the minerals belonged to the Government and the applicants had no vested or indefeasible right to obtain a lease or a renewal to quarry the minerals. There were good reasons for banning the grant of leases to quarry black granite to private parties and in the light of those reasons G the Government could not be compelled to grant leases which would result in the destruction of the mineral resources of the country. Shri K. K. Venugopal, learned counsel who led the argument for the respondents submitted that the question of ownership of the minerals was irrelevant. In making the rules the State Government was acting as a delegate and not as the owner of the minerals. He submitted that it was H not open to the State Government to exercise its subordinate legislative function in a manner to benefit itself as owner of the minerals, nor was it open to the State Government to create a monopoly by such means.

According to Shri Venugopal creation of a monopoly in the State was essentially a legislative function and was incapable of delegation. It was claimed that there was violation of Articles 301 and 303 of the Constitution. It was further claimed that S. 15 of the Mines and Minerals (Regulation and Development) Act 1957, enabled the State Government to make rules to regulate the grant of leases and not to prohibit them. In any case it was said that Rule 8G had no application to renewals and that in any event it would not have the effect of affecting applications made more than 60 days before it came into force.

Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the Nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957. We have already referred to its salient provisions. S. 18, we have noticed, casts a special duty on the Central Government to take necessary steps for the conservation and development of minerals in India. S. 17 authorises the Central Government itself to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. S. 4A empowers the State Government on the request of the Central Government, in the case of minerals other than minor minerals, to prematurely terminate existing mining leases and grant fresh leases in favour of a Government Company or Corporation owned or controlled by Government, if it is expedient in the interest of regulation of mines and mineral development to do so. In the case of minor minerals, the State Government is similarly empowered, after consultation with the Central Government. The public interest which induced Parliament to make the declaration contained in S. 2 of the Mines & Minerals (Regulation and Development) Act, 1957. has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear sign posts to lead and guide the subordinate legislating authority in the matter of the making of rules. Viewed in the light shed by the other provisions of the Act, particularly sections 4A, 17 and 18

A it cannot be said that the rule making authority under S. 15 has exceeded its powers in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government. To view such a rule made by the Subor-
B dinate legislating body as a rule made to benefit itself merely because the State Government happens to be the subordinate legislatitng body, is, but, to take too narrow a view of the functions of that body. The reasons that prompted the State Government to make Rule 8-C were explained at great length in the common counter affidavit filed on be-
C half of the State Government before the High Court. We find no good reason for not accepting the statements made in the counter affidavit. It was said there :

> "I submit that the leases for black granite are governed by the Tamil Nadu Minor Mineral Concession Rules 1959
> D under which originally there was scope for auctioning of quarries of minor minerals. In amendment issued in the G.O. dated 6-12-1972. under Rule 8-A it was indicated that the Collector may sanction leases in favour of applicants who are having an industrial programme to utilise the minerals in their own industry. This provision is applicable to
> E all minerals including black granites. However, it was found that there were several cases where lessees who obtained the black granite areas on lease by auction were not quarrying in a systematic and planned manner taking into consideration the welfare and safety measures of the workers as well as the conservation of minerals. Even after
> F the introduction of the amendment under Rule 8-A in most cases, the industry set up was of a flimsy nature more to circumvent the rule than to really introduce industry including mechanised cutting and polishing. The lessees were also interested only in obtaining the maximum profit in the shortest period of time without taking into consideration the
> G proper mining and development of the mineral. There was also considerable wastage of new materials due to wasteful mining. Therefore, Government issued a further amendment as Rule 8-B wherein the competent authority to grant leases in respect of the quarrying black granite was transferred from the Collector to the State Government level.
> H They also prescribed a standard form and an application fee to be paid with the application. The amendment states that the Director of Industries and Commerce shall technically

scrutinise the industrial programme given by the applicant while forwarding the same to Government. At the same time, in the G.O. issued along with amendment, it was stated that if any of the State Government Organisations like Tamil Nadu Small Industries Corporation Limited, Tamil Nadu Small Industries Development Corporation Limited, Tamil Nadu Industrial Development Corporation Limited is interested to obtain a lease for black granite in a particular area, preference will be given to Government undertaking over other private entrepreneurs for granting the leases applied for by them. However, in spite of these amendments to regulate the grant of mining lease, there were a large number of lessees (exceeding 140), who were engaged in mining without proper technical guidance or safety measures etc. for the workers. These lessees made a strong representation to the then Government in 1976 expressing that though they had given assurance to set up industries to use the granites they were not able to do so far various reasons. They also represented that they should be allowed to export the raw blocks of black granites. Therefore, Government had issued a Government Order dated 15-2-1977 relating to relaxation of the ban of export of raw blocks and provision for setting up a polishing or finishing unit was not made a pre-requisite. They have also stated that the terms and conditions for the existing losses would remain in force. However, on an examination of the performance of the lessees over the past several years, it has been found that excepting in a very few cases, none of the lessees had set up proper industries or developed systematic mining of the quarries. The exports continue to be mainly on the raw black granite materials and not cut and polished slabs. A large number of the leases were not operating either due to speculation or lack of finance from the lessees. Therefore, Government decided that there should be no further grant of lease to private entrepreneurs for black granite. This was mentioned in G.O.Ms. No. 1312 Industries dated 2-12-1977.

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We are satisfied that Rule 8C was made in bonafide exercise of the rule making power of the State Government and not in its misuse to advance its own self-interest. We however guard ourselves against being understood that we have accepted the position that making a rule which is perfectly in order to be considered a misuse of the rule making power, if it advances the interest of a State, which really means the people of the State.

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A One of the submissions on behalf of the respondents was that monopoly was a distinct legislative subject under entry 21 of List III of the Seventh Schedule to the Constitution and therefore monopoly, even in favour of a State Government can only be created by plenary and not subordinate legislation. Parliament not having chosen to exercise its plenary power it was not open to the subordinate legislat-
B ing body to create a monopoly by making a rule. Our attention was invited to *H. C. Narayanappa & Ors.* v. *State of Mysore & Ors.*(1) where it was held that the expression 'Commercial and industrial monopolies' in entry 21 of List III of the Seventh Schedule to the Constitution was not confined to legislation to control of monopolies
C but was wide enough to include grant or creation of commercial or industrial monopolies in favour of the State Government, also. We are unable to agree with Shri Venugopal's submission. The very decision cited by him furnishes the answer. The validity of a scheme for nationalisation of certain routes made pursuant to the powers conferred by Chapter IVA of the Motor Vehicles Act was under
D attack in that case. One of the grounds of attack was that "by Chapter IVA of the Motor Vehicles Act, 1939,

> "Parliament had merely attempted to regulate the procedure for entry by the States into the business of motor transport in the State, and in the absence of legislation expressly undertaken by the State of Mysore in that behalf, that State was
E incompetent to enter into the arena of motor transport business to the exclusion of private operators;"

Sustenance for the submission was sought to be drawn from the language of Art. 19(6)(ii) which provides that nothing in Art. 19(1)(g) shall 'prevent the State from making any law relating to' 'the
F carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise'. The argument was that the State or a Corporation owned or controlled by the State could carry on a trade, business, industry or service to the exclusion, complete or partial, of citizens, only if the State made
G a law relating to it. The argument was repelled by the Court in these words :

> "The plea sought to be founded on the phraseology used in Art. 19(6) that the State intending to carry on trade or business must itself enact the law authorising it to carry on trade or business is equally devoid of force. The expression
H 'the State' as defined in Art. 12 is inclusive of the Government and Parliament of India and the Government and the Legisla-

(1) [1960] 3 SCR 742 @ 745, 752-753.

ture of each of the States. Under entry No. 21 of the Concurrent List, the Parliament being competent to legislate for creating commercial or trading monopolies, there is nothing in the Constitution which deprives it of the power to create a commerial or trading monopoly in the constituent States. Article 19(6) is a mere saving provision : its function is not to create a power but to immunise from attack the exercise of legislative power falling within its ambit. The right of the State to carry on trade or business to the exclusion of others does not arise by virtue of Art. 19(6). The right of the State to carry on trade or business is recognised by Art. 298; authority to exclude competitors in the field of such trade or business is conferred on the State by entrusting power to enact laws under entry 21 of List III of the Seventh Schedule, and the exercise of that power in the context of fundamental rights is secured from attack by Art. 19(6).

In any event; the expression 'law' as defined in Art. 13(3)(a) includes any ordinance, order, bye-law, rule, regulation, notification, custom, etc., and the scheme framed under s.68C may properly be regarded as 'law' within the meaning of Art. 19(6) made by the State excluding private operators from notified routes or notified areas, and immune from the attack that it infringes the fundamental right guaranteed by Art. 19(1)(g)".

Earlier in *Rai Sahib Ram Jawaya Kapur & Ors.* v. *The State of Punjab*(1), before the Seventh Amendment of the Constitution by which the present Article 298 was substituted for the old Article, the question arose whether it was beyond the competence of the executive Government to carry on a business without specific legislatuve sanction. The answer was that it was not. What was said by the Court in that case was incorporated in the Seventh Amendment of the Constitution. In that case the facts were that the State of Punjab, by a series of executive orders had established for itself a monopoly in the business of printing and selling textbooks for use in schools. The argument that legislative sanction was necessary to enable the State Government to carry on the business of printing and publishing text books was repelled and it was held that no fundamental right of the petitioners who had invoked the jurisdiction of the Court had been infringed.

Another of the submissions of the learned counsel was that G.O.Ms. No. 1312 dated December 2, 1977 involved a major change of policy, which was a legislative function and therefore beyond the competence

(1) [1955] 2 SCR 225.

A of a subordinate legislating body. We do not agree with the submission. Whenever there is a switch over from 'private sector' to 'public sector' it does not necessarily follow that a change of policy requiring express legislative sanction is involved. It depends on the subject and the statute. For example, if a decision is taken to impose a general and complete ban on private mining of all minor minerals, such a B ban may involve the reversal of a major policy and so it may require Legislative sanction. But if a decision is taken to ban private mining of a single minor mineral for the purpose of conserving it, such a ban, if it is otherwise within the bounds of the authority given to the Government by the Statute, cannot be said to involve any change of C policy. The policy of the Act remains the same and it is, as we said, the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. Exploitation of minerals by the private and/or the public sector is contempleted. If in the pursuit of the avowed policy of the Act, it is thought exploitation by the public sector is best and wisest in the D case of a particular mineral and, in consequence, the authority competent to make the subordinate legislation makes a rule banning private exploitation of such mineral, which was hitherto permitted we are unable to see any change of policy merely because what was previously permitted is no longer permitted.

One of the arguments pressed before us was that Sec. 15 of the E Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and. therefore, Rule 8-C was ultra vires Act, S. 15. Well known cases on the subject right from *Municipal Corporation of the City of Toronto* v. *Virgo*(1), and *Attorney General for Ontario* v. *Attorney General for the Dominion* F *and the Distillers and Brewers Association of Ontario*(2) upto *State of Uttar Pradesh & Ors.* v. *Hindustan Aluminium Corporation Ltd. & Ors.*,(3) were brought to our attention. We do not think that 'Regulation' has the rigidity of meaning as never to take in Prohibition'. Much depends on the context in which the expression is used in the Statute and the object sought to be achieved by the contem- G plated regulation. It was observed by Mathew J. in *G. K. Krishnan etc. etc.* v. *The State of Tamil Nadu & Anr. etc.*,(4) "the word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied". In modern statutes concerned as they are with economic and social activities, 'regulation'

H (1) [1896] A.C. 88.
(2) [1896] A.C. 348.
(3) [1979] 3 SCR 709.
(4) [1975] 2 SCR 715 @ 721

must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia* v. *Bank of New South Wales*(1)—and we agree with what was stated therein—that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, to be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibt exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Sec. 15 of the Act.

The submission of the learned counsel that the impugned rule contravened Articles 301 and 303 of the Constitution is equally without force. Now, 'the restrictions freedom from which is guaranteed by Art. 301 would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade" (*Atiabari Tea Co. Ltd.* v. *State of Assam & Ors.*).(2) And, "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of restrictions contemplated by Art. 301". "They are excluded from the purview of the provisions of Part XIII of the Constitution for the simple reason that they do not hamper, trade, commerce or inter-course but rather facilitate them" *The Automobile Transport Rajasthan Ltd.* v. *State of Rajasthan & Ors.*(3). The Mines and Minerals (Regulation and Development) Act is, without doubt a regulatory measure, Parliament having enacted it for the express purpose of "the regulation of mines and the development of minerals". The Act and the rules

(1) [1950] A.C. 235.
(2) [1961] 1 SCR 809.
(3) [1963] 1 SCR 491.

properly made thereunder are, therefore, outside the purview of Art. 301. Even otherwise Art. 302 which enables Parliament, by law, to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest also furnishes an answer to the claim based on the alleged contravention of Art. 301. The Mines and Minerals (Regulation and Development) Act is a low enacted by Parliament and declared by Parliament to be expedient in the public interest. Rule 8C has been made by the State Government by notification in the official Gazette, pursuant to the power conferred upon it by Sec. 15 of the Act. A statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. "Rules made under the Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation.. (*State of U.P. & Ors.* v. *Babu Ram Upadhya*)(1); (See also Maxwell : Interpretation of Statutes, 11th Edn. pp. 49-50). So, Statutory rules made pursuant to the power entrusted by Parliament are law made by Parliament within the meaning of Art. 302 of the Constitution. To hold otherwise would be to ignore the complex demands made upon modern legislation which necessitate the plenary legislating body to discharge its legislative function by laying down broad guidelines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary rules and to amended the rules from time to time to meet unforeseen and unpredictable situations, all within the framework of the power entrusted to it by the plenary legislating body. *State of Mysore* v. *H. Sanjeeviah*(2) was cited to us to show that rules did not become part of the statute. This was a case where by reference to Sec. 77 of the Mysore Forest Act which declared the effect of the rules, it was held that the rules when made did not become part of the Act. That was apparently because of the specific provisions of Sec. 77 which while declaring that the rules would have the force of law stopped short of declaring that they would become part of the Act. In the absence of any express provision, as now, the ordinary rule as enunciated in Maxwell and *State of Uttar Pradesh & Ors.* v. *Babu Ram Upadhya* (supra) would perforce apply.

The next question for consideration is whether Rule 8C is attracted when applications for renewal of leases are dealt with. The argument was that Rule 9 itself laid down the criteria for grant of renewal of leases and therefore rule 8C should be confined, in its application, to

(1) [1961] 2 SCR 679 @ 702. (2) [1967] 2 SCR 361.

grant of leases in the first instance. We are unable to see the force of the submission. Rule 9 makes it clear that a renewal is not to be obtained automatically, for the mere asking. The applicant for the renewal has, particularly, to satisfy the Government that the renewal is in the interests of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is applicable at the time of the grant of lease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the mining of minor minerals it is decided to stop grant of leases in the private sector in the interest of conservation of the particular mineral resource, attainment of the object sought will be frustrated if renewal is to be granted to private entrepreneurs without regard to the changed outlook. In fact, some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in favour of such persons would make the making of Rule 8C a mere exercise in futility. It must be remembered that an application for the renewal of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8C is attracted in considering applications for renewal of leases also.

Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O.Ms. No. 1312 (2-12-1977) should be dealt with as if Rule 8C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. None has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence

A of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. B No. 1312 should be dealt with as if Rule 8C did not exist.

In the view that we have taken on the several questions argued before us all the appeals arising out of applications for the grant or renewal of leases for quarrying black granite in Government lands are allowed and the Writ Petitions filed in the High Court are dismissed. Special C leave is granted in cases in which leave had not been previously granted. The appeals are allowed and disposed of in the same manner.

There are, however, a few appeals in which the applications were not for the grant or renewal of leases to quarry black granite in Government lands but were for permission to quarry black granite in Patta lands in which the right to minerals belonged to the applicants— D private owners themselves. Apart from the fact that Rule 8C occurs in a group of Rules in Section II, which bears the head "Government lands in which the minerals belong to the Government" while the rules relating to lands in which the right to minerals belongs to private owners are dealt with in Section III. The language of Rule 8C is clear that it cannot have any application to lands in which the right E to minerals belongs to the applicants themselves. Rule 8C is only concerned with leases for quarrying black granite and it cannot, therefore, have any application to cases where no lease is sought from the Government. In the case of lands in which the right to minerals belongs to private owners and those owners seek permission to quarry F black granite the applications will have to be dealt with under the relevant rules in Sec. III of the Tamil Nadu Minor Mineral Concession Rules. Rule 8C, it may be noted, does not impose a general ban on quarrying black granite but only imposes a bar on the grant of leases of quarrying black granite. Appeals and Special Leave Petitions which arise out of applications for the grant of permission G to quarry black granite in the Patta lands belonging to the applicants themselves, have therefore, to be dismissed. The result is, Special Leave Petition Nos. 9257, 9259, 9260, 9271, 9273 to 9282 and 9284 of 1980 are dismissed and Special Leave Petition Nos. 9234 to 9248, 9250 to 9256, 9258, 9261 to 9270, 9272, 9283, 9285, 9286, 9288, 9289 and 9290 of 1980 are granted and Appeals allowed. H Civil Appeal Nos. 2602 to 2604 of 1980 are allowed. There will be no order as to costs.

N.K.A. *Ordered accordingly.*

MGIPF—152 SCI/81—2,500—24-8-81